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MICHAEL RODAK, JR.,

75-825

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1975

SYLVESTER J. CAMPBELL,
Petitioner

VS.

HON. MILTON J. SHAPP,
GOVERNOR OF PENNSYLVANIA
and KENNETH G. BIEHN,
DISTRICT ATTORNEY OF
BUCKS COUNTY, and SHERIFF
OF BUCKS COUNTY

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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SYLVESTER J. CAMPBELL, :
Petitioner

:

VS.

: IN THE SUPREME
HON. MILTON J. SHAPP, : COURT OF THE
GOVERNOR OF PENNSYLVANIA : UNITED STATES
and KENNETH G. BIEGN,
DISTRICT ATTORNEY OF :
BUCKS COUNTY, and SHERIFF
OF BUCKS COUNTY :

PETITION FOR CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE ORDER OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, CASE NO. 75-1226

1. Copies of the opinion of the Court of Appeals in the United States District Court are contained in the Appendix.

2. Jurisdiction

a) The date of the judgment sought to be reviewed is September 11, 1975.

b) This Honorable Court has jurisdiction over this federal question under the due process law of the fifth amendment to the constitutional provision for extradition and under

28 U.S.C. Section 2241.

3. Questions presented for review

a) Whether the district court and the Court of Appeals erred in not granting the Writ of Habeas Corpus to correct an abuse of the extradition process constituting a violation of due process where the purpose of the extradition request is not for the purpose of having petitioner stand trial for the crimes charged in the indictments issued by the demanding state, but rather to gain control of the person of the petitioner in the demanding state in order to subject him to processes of law for which he could not and was not extradicted, to wit: to compel him to appear before a legislative or executive committee or other tribunal in connection with matters not related to the indictments.

b) Whether the District Court of Appeals erred in not requiring or allowing an evidentiary hearing to be held on the question of the abuse on the extradition proceeding.

c) Whether the District Court and the Court of Appeals erred in not allowing Petitioner to utilize discovery to prove the abuse of the extradition proceeding.

d) Whether the District Court and Court of Appeals erred in determining that petitioner was a fugitive within the meaning of the Constitution and the extradition statute.

e) Whether the District Court and Court of Appeals erred in failing to determine whether the indictment failed to state an offense or was void as violative of due process under the Constitution.

4. Constitutional provisions and statutes which the case involves:

a) Article 4 Section 2 of U.S. Constitution:

> "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall on demand of the executive authority from the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

b) Amendment 5 to the Constitution of the United States:

> "No person shall. . . be deprived of life, liberty, or property without due process of law. . . ."

c) 19 Pa. Statute Sec. 191.3

5. Statement of the Case.

Petitioner was indicted by an Essex County, New Jersey grand jury for three charges arising out of allegations that in Newark, New Jersey he submitted a false transcript, under oath, evidencing that he was a graduate of Delaware

University, as part of an application for a New Jersey engineering license. The indictments set forth that the first crime was committed on April 30, 1970, the second between April 30, 1970 and February 17, 1971, and the third between October 28, 1970 and February 17, 1971.

On March 27, 1973, a request was made for rendition by the State of New Jersey to the Commonwealth of Pennsylvania. Petitioner resides in Pennsylvania, and has his business in Pennsylvania. A warrant was issued by Pennsylvania, and petitioner was arrested pursuant to that warrant. Petitioner applied for habeas corpus to the courts of Pennsylvania, and relief was denied. He appealed the decision to the Superior Court of Pennsylvania, which affirmed, and petitioned for review to the Supreme

Court, which denied review.

He then sought habeas corpus relief in the U. S. District Court for the Eastern District of Pennsylvania, which refused to conduct an evidentiary hearing or allow discovery, and which denied relief. See Exhibit A. An appeal was taken to the U.S. Court of Appeals for the Third Circuit, which affirmed the decision of the District Court. Exhibit B.

Petitioner averred in his petition for habeas corpus before the District Court that the State of New Jersey was seeking his extradition, not for the purpose of trying him on the indictments, but for the purpose of bringing him into New Jersey to subject him to legal process and compulsion for the purpose

of bringing him before legislative or executive committees or other tribunals to compel him to testify on matters not related to the charges in the indictment. It was averred that this was a violation of the extradition clause of the Constitution and a violation of due process of law. Although petitioner requested an evidentiary hearing to prove the averment, no hearing was ever allowed.

Petitioner had raised the same issue in the state court in his petition for allocatur. or petition for review, to the state Supreme Court. Petitioner had not raised the issue in the state trial court and no evidentiary hearing

was ever had on this issue in the state courts.

In the state court proceedings petitioner stipulated that he had been within the state of New Jersey on unrelated business on dates within the time period stated in the second and third indictments, but had not been in New Jersey on any date specifically listed in the indictments.

6. JURISDICTION

The United States District Court for the Eastern District of Pennsylvania had jurisdiction under 28 U.S.C. 2241 Constitution; Amendment V, U.S. Constitution. See Sokol, Federal Habeas Corpus, § 4.2C, page 45 (2d Rev. Ed. 1969).

7. ARGUMENT

I. The District Court erred in not granting the writ of Habeas Corpus

to correct an abuse of the extradi-process.

A prisoner, in testing the legality of extradition proceedings through habeas corpus, may test the motivation or purpose of the extradition, to insure that the extradition for a criminal charge is not a pretext to remove him to another jurisdiction for a purpose other than that within the intendment of the Constitution and applicable statutes. Commonwealth ex rel. Spivack v. Heinz, 141 Pa. Super. 158, 14 A.2d 875 (1940); Chatham v. State, 248 So. 2d 768 (Ala. Cr. App. 1971); see also Kerr v. Illinois, 119 U.S. 436 (1886); cf. Holiday vs. Johnston, 313 U.S. 342, 351 (1951); Yick Wo v. Hopkins, 118 U.S. 356, 373-374 (1886); Walker v. Johnson, 312 U.S. 275, 285

(1941); United States v. Falk, 479 F.2d 616 (7th Cir. 1973); Kostic v. Smedley, 15 Cr. L. 2213 (Alaska, May 10, 1974.

II. The District Court erred in not holding an evidentiary hearing.

A petitioner seeking to establish the illegality of his detention for extradition may be permitted to prove the facts which establish the illegality of his detention at a hearing conducted a part of the habeas corpus proceeding. Holiday v. Johnston, 313 U.S. 342, 351, (1941); Peyton v. Rowe, 391 U.S. 54, 58 (1968); Walker v. Johnson, 312 U.S. 275, 285

(1941) ("If an issue of fact is presented the practice appears to have been to . . . hold a hearing at which the evidence is received. This is, we think, the only admissible procedure.").

District Court erred in determining that petitioner was held under state custody within the meaning of 28 U.S.C. Section 2241 (c) (2). One leading commentator has stated "The sounder view is that extradition falls under Section 2241 (c) (1)." Sokol, Fed. Habeas Corpus, Sec. 4.2 P. 46 (2nd Rev. Ed. 1969). See also ex parte Joseph Smith, the Mormon Prophet, 3 McLean 121 (1842); Kentucky vs. Dennison, 65 U.S. (24 HOW) 66 (1860). The act of returning a prisoner from the asylum state to the demanding

state is done under the sovereignty of the United States. 366 (1872). The state and Federal Courts possess concurrent jurisdiction and Habeas Corpus extradtition proceedings. See U.S. ex rel Darcy vs. Superintendent of County prisons, 111 F.2d 309 (3rd cir. 1940), cert. denied, 311 U.S. 662. Accordingly a de novo hearing was required in the District Court.

III. The District Court erred in denying petitioner discovery.

The Federal courts may utilize discovery procedures to determine the factual issue of denial of due process of law and the abuse or misuse of the extradition procedure. Harris v. Nelson, 394 U.S. 286 (1969).

IV. The District Court erred in

finding that petitioner was a fugitive subject to extradition.

One of the elements required for extradition is that the subject must have been present in the demanding state at the time of the commission of the crime. Hyatt vs. New York, 188 U.S. 691 (1903). Herein, the use of an expanded period of time by the use of broad date brackets is a subterfuge to cover petitioner's casual business trips to New Jersey. This practice must be considered a mere avoidance of the requirements of Hyatt, and the rule, to avoid this problem, should require that presence was on a date where an alleged act in furtherance of the crime took place.

V. The District Court erred in finding that the indictment stated an offense.

In an extradition habeas corpus proceeding the court must look to see if the indictment states an offense. Burke v. State, 265 A.2d 489 (Me. 1970); Commonwealth ex rel. Kelly v. Santo, 436 Pa. 204, 259 A.2d 456 (1969). Where the indictments aver that the crime took place over a broad time span they violate due process of law, and do not state an offense.

WHEREFORE, Petitioner prays that this Honorable Court grant this Petition for Writ of Certiorari.

HARVEY L. ANDERSON, ESQ.